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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

James McNeal,)
v. Plaintiff,)) NOTICE OF REMOVAL
Safeway, United Food and Commercial)
Workers Local 555,)
Defendants.)

TO THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that, pursuant to 28 USC §§1441 and 1446, Defendant United Food and Commercial Workers Local 555 (hereafter “UFCW”) removes to this Court the case now pending in Multnomah County Circuit Court as *James McNeal vs Safeway, United Food and Commercial Workers Local 555.*, Case No. 24CV39780. All Defendants join in this removal.

UFCW removes this case based on federal question as follows:

**NOTICE OF REMOVAL IS TIMELY AND ALL DEFENDANTS JOIN IN THE
REMOVAL**

(1) On February 5, 2025, Plaintiff James McNeal filed a complaint in this action now pending in Multnomah County Circuit Court as *James McNeal vs Safeway, United Food and Commercial Workers Local 555.*, Case No. 24CV39780. Pursuant to 28 USC §1446(a), all state court papers served on Defendants UFCW and Safeway Inc. (“Safeway”) (collectively, “Defendants”) at the time of removal, consisting of the Complaint, are attached as Exhibit 1.

(2) This Notice of Removal is timely filed under 28 USC §1446(b), which provides that a notice of removal must be filed within 30 days after a defendant receives, by service or otherwise, the initial pleading. As of the date of filing this Notice of Removal, both Defendant have received a copy of the complaint, but neither have been served.

(3) All Defendants join in this removal. A copy of Defendant Notice of Joinder in Removal is attached as Exhibit 2.

(4) No further proceedings have been had in the Circuit Court of Multnomah County, Oregon, as of the date of filing of this removal.

**THIS COURT HAS FEDERAL QUESTION JURISDICTION
PURSUANT TO 28 U.S.C. § 1331.**

(5) Under 28 U.S.C. § 1331, United States district courts have original jurisdiction of “all civil actions arising under the Constitution, laws, or treaties of the United States.” Additionally, the Supreme Court has held that “[t]he artful pleading doctrine allows removal where federal law completely preempts a plaintiff’s state-law claim.” *Rivet v. Regions Bank*, 522 U.S. 470, 475, 118 S. Ct. 921, 139 L. Ed. 912 (1998).

(6) The Labor Management Relations Act (LMRA) grants to federal courts jurisdiction over suits for violation of contracts between an employer and a labor organization.

29 USC § 185(a) (LMRA § 301). When an employee claims only a breach of the union's duty, jurisdiction is based on the general statutes giving federal courts jurisdiction over civil actions arising under laws of the United States. The statutes include 28 USC § 1331, 28 USC § 1337, and 42 USC § 1981.

(7) The Supreme Court has established that the National Labor Relations Act, 29 U.S.C. §§ 151-169, creates a duty of fair representation for labor unions like Defendant UFCW. *Vaca v. Sipes*, 386 US 171, 87 S Ct 903, 17 L Ed 2d 842 (1967).

(8) The LMRA preempts the field as to virtually displace all state causes of action, leaving only federal claims. The doctrine of complete preemption applies if “the pre-emptive force of a [federal] statute is so ‘extraordinary’ that it ‘converts an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.’” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987) (quoting *Metropolitan Life Ins. Co. v. Taylor*, 481 US 58, 65, 107 S Ct 1542, 95 L Ed2d 55 (1987)). When an employee claims only a breach of the union's duty, jurisdiction is based on the general statutes giving federal courts jurisdiction over civil actions arising under laws of the United States. The statutes include 28 USC § 1331, 28 USC § 1337, and 42 USC § 1981.

(9) Plaintiff filed his Complaint on February 5, 2025.

(10) Plaintiff alleges that Defendant UFCW violated its duty of fair representation.

(11) Plaintiff, proceeding pro se, alleges that the duty of fair representation is found in Oregon Revised Statute 243.672(2)(a). However, this statute is part of the Oregon Public Employee Collective Bargaining Act, which only applies to public employees and public employers. See ORS 243.650 (“As used in ORS 243.650 to 243.809...‘Labor organization’ means any organization that has as one of its purposes representing employees in their

employment relations with public employers.”). Thus, ORS 243.672(2)(a) creates a duty of fair representation for labor unions representing public employees. Plaintiff’s citation to that statute, while erroneous, only further confirms that he has brought a duty of fair representation claim against Defendant UFCW.

(12) Because Safeway is a private employer under the NLRA and LMRA, Plaintiff’s allegations concerning a breach of the duty of fair representation are federal questions under the NLRA and LMRA.

REMOVAL TO THIS DISTRICT IS PROPER

(13) Pursuant to 28 USC §§1331, 1441, and 1446, removal of the above-captioned state court action to this court is appropriate.

(14) Pursuant to 28 USC §1441, removal is made to this Court as the district and division embracing the place where the state action is pending.

(15) Defendant UFCW is providing to the Plaintiff written notice of the filing of this Notice of Removal. Furthermore, Defendant UFCW is filing a copy of this Notice of Removal with the Clerk of the Circuit Court of Multnomah County, Oregon, where the action is currently pending.

DATED: February 25, 2025.

TEDESCO LAW GROUP

/s/ Jack D. Smart

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CERTIFICATE OF SERVICE

I hereby certify that on February 2025, I emailed the foregoing NOTICE OF REMOVAL to :

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